

SENATE BILL NO. 164

INTRODUCED BY DE. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE GOOD NEIGHBOR POLICY TO INCLUDE RECREATIONAL LAND AND WATER ACQUIRED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PUBLIC HUNTING, FISHING, TRAPPING, AND OUTDOOR RECREATION AND ESTABLISHING MAINTENANCE PRIORITIES FOR THAT LAND; DEFINING "MAINTENANCE" AS APPLIED TO PUBLIC RECREATIONAL LAND AND WATER; REQUIRING THAT A PERCENTAGE ABOVE THE PURCHASE PRICE OF THE DEPARTMENT'S ACQUIRED LAND OR WATER RIGHTS BE BUDGETED FOR MAINTENANCE; ~~ESTABLISHING A MAINTENANCE ACCOUNT; REQUIRING THAT WHEN THE DEPARTMENT SELLS OR DISPOSES OF LAND OR WATER RIGHTS, MONEY FROM THE SALE BE USED FOR MAINTENANCE OF THE DEPARTMENT'S OTHER LAND OR WATER AS A FIRST OPTION BEFORE USING THE MONEY TO ACQUIRE ADDITIONAL LAND OR WATER; PROVIDING A STATUTORY APPROPRIATION;~~ AMENDING SECTIONS 17-7-502, 23-1-126, 23-1-127, AND 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;

15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304;
 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202;
 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501;
 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108;
 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108;
 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; [section 5]; 87-1-513; 90-1-115; 90-1-205;
 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

Section 2. Section 23-1-126, MCA, is amended to read:

"23-1-126. Good neighbor policy -- public recreational ~~lands~~ land. (1) The good neighbor policy of public land use, as applied to public recreational ~~lands~~ land, seeks a goal of no impact upon adjoining private and public ~~lands~~ land by preventing impact on ~~those the~~ adjoining ~~lands~~ land from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy. To facilitate the good neighbor policy regarding impact to adjoining land from noxious weeds, the department of fish, wildlife, and parks shall, prior to purchasing any land where noxious weeds are present, develop a noxious weed management agreement that complies with the county weed management district's noxious weed management program, as required in 7-22-2154.

(2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to require the department of fish, wildlife, and parks to place maintenance as a priority:

(a) over additional development at all state parks and fishing access sites; and

(b) on recreational land or water acquired pursuant to 87-1-209 for public hunting, fishing, trapping, or outdoor recreation.

(3) The restriction in subsection (2) does not apply to:

~~(a) development and improvement projects for which the legislature has appropriated funds prior to October 1, 1999;~~

~~(b)~~(a) activities directly related to the historic preservation, restoration, or protection of assets in state parks;

~~(c)~~(b) at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the federal energy regulatory commission's hydropower relicensing requirements and in conjunction with private entities, political subdivisions of the state of Montana, and federal agencies;

~~(d)~~(c) at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir undertaken in conjunction with the U.S. army corps of engineers; or

~~(e)~~(d) partnership projects as designated within the park master plan.

(4) Any development in state parks and fishing access sites beyond those defined as maintenance in 23-1-127(1) must be approved by the legislature."

Section 3. Section 23-1-127, MCA, is amended to read:

"23-1-127. Maintenance priority -- maintenance defined. (1) With regard to state parks and fishing access sites, implementation of the good neighbor policy requires that priority is to be given to maintenance of existing facilities, rather than to development or improvement. As used in 23-1-126(2)(a) and this ~~section~~ subsection, "maintenance" means:

~~(1)(a) weed control as the first priority;~~

(B) FENCE INSTALLATION AND REPAIR OF EXISTING FENCES;

~~(b)~~(C) placing, cleaning, and stocking of latrines;

~~(2)~~~~(c)~~(D) garbage and litter removal;

~~(3)~~~~(d) fence installation and repair of existing fences;~~

- 1 ~~(4)~~ weed control;
- 2 ~~(5)~~(e) implementation of safety and health measures required by law to protect the public;
- 3 ~~(6)~~(f) upkeep of established trails, roads, parking areas, boat docks, and similar facilities existing in state
- 4 parks and fishing access sites on October 1, 1999;
- 5 ~~(7)~~(g) in-kind replacement of existing facilities, including electric lines or facilities, or replacement of those
- 6 existing facilities with facilities that have less impact on the state park or fishing access site;
- 7 ~~(8)~~(h) erosion control;
- 8 ~~(9)~~(i) streambank stabilization;
- 9 ~~(10)~~(j) erection of barriers necessary to preserve riparian vegetation and habitat;
- 10 ~~(11)~~(k) minimal signage necessary to inform users of appropriate state park or fishing access site use
- 11 and applicable regulations and of historical, natural, cultural, geographical, and geological features in the area;
- 12 ~~(12)~~(l) measures necessary to ensure compliance with the federal Americans With Disabilities Act of
- 13 1990, when applicable;
- 14 ~~(13)~~(m) planting of native trees, grasses, and shrubs for habitat stabilization and privacy shielding;
- 15 ~~(14)~~(n) installation of fire rings, picnic tables, and trash collection facilities; and
- 16 ~~(15)~~(o) other necessary activities and expenditures consistent with the good neighbor policy and the
- 17 intent of 23-1-126, 23-1-128, and this section, including new trails, new boat ramps, and necessary new access
- 18 roads into and within the state park or fishing access site.
- 19 (2) With regard to recreational land or water rights acquired pursuant to 87-1-209 for public hunting,
- 20 fishing, trapping, or outdoor recreation, implementation of the good neighbor policy requires that priority is to be
- 21 given to maintenance. As used in 23-1-126(2)(b) and this subsection, "maintenance" means:
- 22 (a) weed control as the first priority;
- 23 (b) garbage and litter removal;
- 24 (c) repair of existing fences;
- 25 (d) implementation of safety and health measures required by law to protect the public;
- 26 (e) in-kind replacement of existing facilities, including electric lines or facilities, or replacement of those
- 27 existing facilities with facilities that have less impact on the land or water;
- 28 (f) erosion control;
- 29 (g) streambank stabilization;
- 30 (h) erection of barriers necessary to preserve riparian vegetation and habitat;

1 (i) planting of native trees, grasses, and shrubs for habitat stabilization; and
2 (j) other necessary activities and expenditures consistent with the good neighbor policy and the intent
3 of 23-1-126 and this section."
4

5 **Section 4.** Section 87-1-209, MCA, is amended to read:

6 **"87-1-209. Acquisition and sale of ~~lands~~ land or ~~waters~~ water.** (1) The department, with the consent
7 of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the
8 approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may
9 acquire easements upon ~~lands~~ land or ~~waters~~ water for the purposes listed in this subsection. Any acquisition
10 of land or water rights for purposes of this subsection, EXCEPT THAT PORTION OF ACQUISITIONS MADE WITH FUNDS
11 PROVIDED UNDER 87-1-242(1), must, for purposes of the department's operating budget, include an additional 40%
12 20% above the purchase price to be used for maintenance of the land or water rights following the purchase.
13 ACQUIRED BY THE DEPARTMENT. THE ADDITIONAL AMOUNT ABOVE THE PURCHASE PRICE OR \$300,000, WHICHEVER IS
14 LESS, MUST BE DEPOSITED IN THE ACCOUNT ESTABLISHED IN [SECTION 4 5]. As used in subsection (3)(c) and this
15 subsection, "maintenance" means that term as defined in and consistent with the good neighbor policy in
16 23-1-127(2). The department may develop, operate, and maintain acquired ~~lands~~ land or ~~waters~~ water rights:

17 (a) for fish hatcheries or nursery ponds;

18 (b) as ~~lands~~ land or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation,
19 or protection;

20 (c) for public hunting, fishing, or trapping areas;

21 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing
22 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

23 (e) for state parks and outdoor recreation;

24 (f) to extend and consolidate by exchange, ~~lands~~ land or ~~waters~~ water rights suitable for these purposes.

25 (2) The department, with the consent of the commission, may acquire by condemnation, as provided in
26 Title 70, chapter 30, ~~lands~~ land or structures for the preservation of historical or archaeological sites that are
27 threatened with destruction or alteration.

28 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the
29 commission, may dispose of ~~lands~~ land and water rights acquired by it on those terms after public notice as
30 required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state

lands land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department lands land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands land or ~~waters~~ water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands land or ~~waters~~ water right is situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands land and ~~waters~~ water right as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

~~When spending money from the sale or disposal of land or water rights pursuant to this subsection (3), the department shall, as a first option, use the money for maintenance of other land or water in the department's possession before using the money to acquire additional land or water.~~

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is

not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

(5) The department shall convey ~~lands~~ land and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

NEW SECTION. SECTION 5. MAINTENANCE ACCOUNT -- ANNUAL REPORT. (1) THERE IS A MAINTENANCE ACCOUNT IN THE STATE SPECIAL REVENUE FUND. ~~PURSUANT TO 87-1-209(1), THE ADDITIONAL AMOUNT ABOVE THE PURCHASE PRICE~~ IN ADDITION TO THE FUNDS SET ASIDE FOR MAINTENANCE OF LAND OR WATER ACQUIRED BY THE DEPARTMENT ~~MUST BE DEPOSITED IN THE ACCOUNT.~~ PURSUANT TO 87-1-209(1), THE DEPARTMENT SHALL ALSO DEPOSIT INTO THE MAINTENANCE ACCOUNT:

(A) FUNDS DEDICATED FOR DEVELOPMENT AND MAINTENANCE OF REAL PROPERTY USED FOR WILDLIFE HABITAT UNDER 87-1-242(4)(A);

(B) INTEREST EARNED ON THE ACCOUNT; AND

(C) ANY OTHER MONEY THAT THE DEPARTMENT CONSIDERS APPROPRIATE OR NECESSARY FOR MAINTENANCE OF THE DEPARTMENT'S LAND OR WATER.

(2) FUNDS DEPOSITED IN THE ACCOUNT ARE STATUTORILY APPROPRIATED TO THE DEPARTMENT AND MAY BE USED ONLY FOR MAINTENANCE OF ANY LAND OR WATER ACQUIRED BY THE DEPARTMENT. ~~ANY INTEREST EARNED MUST BE RETAINED IN THE ACCOUNT.~~

(3) (A) THE DEPARTMENT SHALL PROVIDE AN ANNUAL REPORT REGARDING DEPOSITS INTO AND WITHDRAWALS FROM THE ACCOUNT ESTABLISHED IN SUBSECTION (1) TO THE OVERSIGHT SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY COUNCIL FOR THE PURPOSE OF DEMONSTRATING THE USE OF FUNDS IN THE ACCOUNT TOWARD THE GOOD NEIGHBOR POLICY.

(B) THE REPORT MUST DESCRIBE THE TYPES OF MAINTENANCE COMPLETED BY FISH, WILDLIFE, AND PARKS REGION AND MAINTENANCE PLANS FOR THE SUBSEQUENT FISCAL YEAR.

(C) THE REPORT IS DUE TO THE ENVIRONMENTAL QUALITY COUNCIL BY SEPTEMBER 1 FOLLOWING THE END OF EACH FISCAL YEAR.

NEW SECTION. SECTION 6. CODIFICATION INSTRUCTION. [SECTION 4 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 87, CHAPTER 1, PART 2, AND THE PROVISIONS OF TITLE 87, CHAPTER 1, PART 2, APPLY TO [SECTION 4 5].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. SECTION 8. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2013.

- END -